bonus at the sole discretion of the Managing Director from the amount approved by resolution of the directors each year.

On 12 November 1974, the Finance Minister announced in Parliament that effective from the year of assessment 1975 onwards the amount of annual bonus payable to an employee allowed for tax deduction purposes will be limited to two-twelfths of salary. This announcement was followed by the addition of a new sub-section 39(1)(h) to the Income Tax Act. In 1976, paragraph (h) was amended to restrict bonus to RM1,000 or two-twelfths of salary whichever is greater.

The appellant says it has no intention to avoid payment of tax but contends that s. 39(1)(h) applies to bonus and not to commission, thereby drawing a distinction between the two payments. In a taxing statute, the question always is what is the real character of the payment, not what the parties call it: *C.I.R. v. Wesleyan & General Assurance Society* 30 TC 11. The issue whether commissions paid to employees as incentive payments from profits is bonus in the context of s. 33 read with s. 39(1)(h) has been finally considered by the Supreme Court in *Director-General of Inland Revenue v. Highlands Malaya Plantations Ltd.* [1988] 2 MLJ. 99 where it was held at page 105:

> The payment may be gratuitous as in the case of the non-managerial staff or it may be payment which the managerial staff are entitled as "incentive" but nevertheless it is still a "bonus".

In my judgment the decision in the *Highlands* case applies to the facts of this appeal.

For the reasons stated, I dismiss this appeal with costs and confirm the Deciding Order of the Special Commissioners.

LEE CHEE ONN

v.

LEE KENG SOON & ANOR.

HIGH COURT, KUALA LUMRUR
DATO' SITI NORMA BTE YAAKOB J.
[PETITION NO. D2-26-22-93]
16 MAY 1994

COMPANY LAW: Section 181 Companies Act 1965 - Petition for shareholding in 2nd respondent company to be purchased by 1st respondent, release of petitioner as guarantor and release of petitioner's property charged as securitiy for facilities granted to 2nd respondent - 2nd respondent family company - 1st respondent majority shareholder - Petitioner given free hand to manage company - Differences arising between 1st respondent and petitioner - 1st respondent asserting control over company and excluding petitioner from management of company - Petitioner giving notice deeming himself constructively dismissed as manager - Contention that affairs of company being conducted in manner oppressive or in disregard or unfairly discriminatory or prejudicial to petitioner as minority shareholder of 2nd respondent - Whether justified.

The 2nd respondent (the company) was a family company dealing in textile. The 1st respondent, the chairman and managing director, was the majority shareholder holding 160,000 shares and the petitioner, a director and manager held 40,000 shares. The petitioner was given a free hand in the management of the company in Kuala Lumpur whilst the 1st respondent ran his other company in Singapore (the Singapore company). Differences between the 1st respondent and petitioner emerged when the petitioner suggested the company purchase the textiles directly from the suppliers instead of from the Singapore company to cut costs. The 1st respondent disagreed and thereafter began to assert control over the company, and by a series of actions excluded the petitioner from the management of the company. On 4 August 1993 the petitioner gave notice to the 1st respondent that he deemed himself constructively dismissed as the manager of the company.

The petitioner had stood as guarantor for the company in respect of facilities granted by 3 banks to the company and had also charged his property as security. Pursuant to a petition the petitioner sought to sell his shares to the 1st respondent and to secure his release as a

guarantor and the release of his property. The respondents failed to file any affidavit to object to the petition despite having agreed to do so by Court order dated 2 September 1993. Instead they filed an answer contrary to the Court order. Since the answer was not an affidavit the Court rejected it and proceeded with the hearing in the absence of any affidavit filed by the respondents.

Held:

[1] There was affidavit evidence that the 1st respondent assumed a dictatorial attitude and the many specific acts enumerated, particularly his acts of dissipating the company funds were clearly acts of oppression. He ran the company as his private domain. He ignored and insulted the petitioner, his son, and generally acted arbitrarily in the affairs of the company. There had been a visible departure of fair play and unfair discrimination and in this respect, the Court was entitled to consider the petitioner's legitimate expectation arising from his earlier active participation in the company as well as his standing as a member of the company.

[2] Since there was no serious attempt by the respondents to object to this petition, the Court granted the petition with costs.

[Petition granted with costs].

Legislation referred to:
Companies Act 1965, s. 181

For the petitioner - Chan Vy Sing; M/s. Lee & May
For the respondents - Lee Shan Too; M/s. S. T. Lee & Partners

JUDGMENT

Siti Norma bte Yaakob J:

This petition is presented under s. 181 of the Companies Act 1965 and in essence the petitioner complains that the affairs of the 2nd respondent are being conducted by the 1st respondent in a manner oppressive or in disregard or unfairly discriminatory or prejudicial to him as a minority shareholder of the 2nd respondent.

The petitioner is not seeking the winding up of the 2nd respondent but instead asks that his shareholdings in the 2nd respondent be purchased by the 1st respondent and that the respondents secure his release as a guarantor as well as the release of the property which he had charged as a security for facilities granted to the 2nd respondent.

The 2nd respondent (the company) is basically a family company and was incorporated on 14 June 1980, to take over the business of the firm of Chop Lip Sin Hong Company, dealers in the textile business. The company has an authorised capital of RM1 million divided into 1 million shares of RM1 each.

The 1st respondent, the chairman and the managing director of the company, holds 160,000 shares. His son, the petitioner, who is the manager and a director of the company, holds 40,000 shares. The third director is the wife of the 1st respondent and she holds 60,000 shares. Besides these 3, the other shareholders are the friends and associates of the 1st respondent and his other children.

Although the 1st respondent is the managing director of the company, he had allowed the petitioner to manage the company from the very beginning as he, the 1st respondent, was busy running his other company in Singapore known as Lip Sin Hong Enterprise Pte. Ltd. (the Singapore company). As the manager of the company, the petitioner is the signatory to all cheques issued by the company and in November 1991, when he assumed the functions of a salesman, he was allowed the use of the company car as well.

As a dealer of textiles, the company purchased a large portion of such textiles from the Singapore company, who acts as the intermediary between the suppliers of the textiles and the company.

Between June 1980 to November 1992, the petitioner faced no problems with the management of the company and whilst the 1st respondent tended to his interests in Singapore, the petitioner had a free hand managing the company in Kuala Lumpur. However, differences between them emerged in November 1992, when the petitioner suggested that the company purchased the textiles directly from the suppliers and not from the Singapore company and in this way the company would be able to cut down its costs and reap more profit.

Needless to say, the 1st respondent was not agreeable to the petitioner's suggestion and from then onwards, the 1st respondent began to assert his control over the company and by a series of conduct, excluded the petitioner from

the management of the company. These conduct include:

1. the removal of the company's cheque books and rubber stamp from the petitioner.
2. the fraudulent payment of the company's monies to himself by the device of issuing invoices and payment vouchers in respect of purchases allegedly made by the company with non-existent third parties. There were no such purchases made by the company and the payments were made in the name of the 1st respondent or in cash.
3. convening a meeting on 24 December 1992, and through a proxy given by the other shareholders, the 1st respondent notified the petitioner that the company car would be sold and that the petitioner's salary would be reduced from RM4,000 to RM2,500 per month.
4. terminating the services of the petitioner's secretary without the petitioner's consent or knowledge.
5. denying the car allowance due to the petitioner for April 1993.
6. taping or listening in to the petitioner's telephone conversations.
7. issuing a notice dated 12 May 1993, calling for an Extraordinary General Meeting to be held on 8 June 1993, without identifying the matters to be discussed at the meeting. The intended EGM was, however, postponed.
8. issuing a second notice dated 28 May 1993, calling for another EGM to be held on 26 June 1993, again without identifying the particular matters to be discussed at the EGM. At this EGM, the petitioner questioned the lack of details given in the notice but his objections were never recorded despite a request made by the petitioner to that effect. Instead, he was given an ultimatum that if he was not satisfied with the way the company was being managed, he should tender his resignation within a month.
9. hiring another person to take over the management of the company from the petitioner.
10. replacing the locks to the company's premises, thereby preventing the petitioner from entering the premises.
11. refusing to pay the petitioner's allowance and his pay for July 1993.

Matters came to a head on 4 August 1993, when the petitioner gave notice to the 1st respondent that he deemed himself constructively dismissed as the manager of the company.

In the course of his managing the affairs of the company, the petitioner has stood as a guarantor for the company in respect of facilities granted by 3 banks to the company and the petitioner had also charged his own property as security. The petitioner does not seek to have the company wound up but mindful of his position as a guarantor and that he can no longer expect any returns from the company, the petitioner prays that his 40,000 shares with the 2nd respondent be purchased by the 1st respondent and that the company secures his release as a guarantor as well as the release of the security that he had provided for the banking facilities enjoyed by the company.

The respondents did not file any affidavit to object to the petition despite having agreed to do so by an order of Court dated 2 September 1993. Instead, they filed an answer dated 23 February 1994, which was not sworn before a Commissioner for Oaths and only served on the petitioner's solicitors a day before the hearing of the petition. The filing of this answer seems to run contrary to the Order of Court dated 29 November 1993, and since the answer is not an affidavit, I had refused to accept it and the hearing proceeded in the absence of any affidavit filed by the respondents.

Nonetheless, at the hearing, Counsel for the respondents questioned how a lost company cheque was traced to the petitioner's bank. By his letter dated 12 May 1993, the petitioner has explained that the cheque represented his bonus for 1992 and that the payment of such a bonus had always been approved by the company from the very beginning.

There are affidavit evidence on record to show that the 1st respondent assumed a dictatorial attitude and the many specific acts enumerated above, particularly his acts of dissipating the company funds are clearly acts of oppression and he ran the company as if it was his private domain. He ignored and insulted the petitioner, his son, and generally acted arbitrarily in the affairs of the company. There has been a visible departure of fair play and unfair discrimination and in this respect, the Court is entitled to consider the petitioner's legitimate expectation

arising from his earlier active participation in the company as well as his standing as a member of the company.

Since there is no serious attempt made by the respondents to object to this petition, I had from the many documentary evidence adduced, allowed the petition and ordered

(1) that the 1st respondent purchase the petitioner's shares in the company for an amount to be valued by an independent valuer.
(2) that the 2nd respondent secure the release of the petitioner from all personal guarantees and other securities furnished by the petitioner in respect of banking facilities granted to the 2nd respondent.
(3) costs.

LEE CHIOU CHING

v.

PUBLIC PROSECUTOR

HIGH COURT, SIBU
TUAN STEVE L.K. SHIM J.
[CRIMINAL APPLICATION NO. 2 OF 1994]
11 MAY 1994

CRIMINAL PROCEDURE: Bail - Charge of being in possession of 89.81 grammes of ganja - Dangerous Drugs Act 1952 s. 12(2) read with s. 39A(2)(f) - Not guilty plea - Accused refused bail and ordered to be remanded - Whether bail ought to be granted - Dangerous Drugs Act s. 41B - CPC s. 259.

This was an application by way of motion to reverse or vary the order of the Sessions Court, Sibu, which ordered the applicant to be remanded in prison under s. 259 CPC, after the applicant pleaded not guilty to a charge of being in possession of 89.81 grammes of ganja under s. 12(2) Dangerous Drugs Act 1952 read with s. 39A(2)(f) thereof. It was argued before the learned appellate Judge that the Sessions Court had erred in law in placing too much emphasis on *Public Prosecutor v. Leong Ying Ming* [1992] 1 MLJ 177 and in failing to consider the case of *Ho Huan Chong & Ors. v. Public Prosecutor* [1980] 2 MLJ 289 which, according to the applicant's Counsel, is still good law.

Held:

[1] The supreme Court in *Public Prosecutor v. Leong Ying Ming*, in considering the case of *Leong Siew Hoong v. Public Prosecutor* [1988] 1 MLJ 396, had indirectly considered *Ho Huan Chong*. On the basis of the authority in *Public Prosecutor v. Leong Ying Ming* it is clear that the approach adopted by the High Court in *Ho Huan Chong* was not followed or approved by the Supreme Court. That being the position the applicant's reliance upon *Ho Huan Chong* is misplaced.

[2] In any event *Ho Huan Chong* is distinguishable from the instant case on the facts. In that case it is patently clear that the difference between the amount of heroin stated in the charge and that of the prescribed limit in law, being only 2.4 grammes, is very marginal and so the possibility of the stated amount going below the legally prescribed amount is real and significant. That possibility does not arise here as there is a difference of 39.81 grammes in weight